



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200843034**
Release Date: 10/24/2008

Date: July 30, 2008

U.I.L.: 501.06-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

EO

Dear :

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code . Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under section 6110 of the Code, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: May 19, 2008

U.I.L.: 501.06-01

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

State =

A =

B =

F =

K =

R =

V =

Date 1 =

Date 2 =

Date 3 =

x1 =

x2 =

x3 =

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(c)(6) of the Internal Revenue Code. Based on the information provided, we have concluded that you do not qualify for exemption under this section. The basis for our conclusion is set forth below.

FACTS:

You, M, are a not-for-profit corporation organized under the laws of State on Date 1. You filed a Form 1024 seeking exempt status under section 501(c)(6) of the Code.

According to your Articles of Incorporation your purposes are: to unite those engaged in the recognized branches of the real estate business in R for the purpose of exerting a beneficial influence upon the real estate business and related interests; to promote and maintain high standards of conduct in the real estate business as expressed in the Code of Ethics of the V; to provide a unified medium for real estate owners and those engaged in the real estate business whereby their interests may be safeguarded and advanced; to further the interest of home and other real property ownership; to unite those engaged in the real estate business in R with B

and V, thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein; to designate, for the benefit of the public, those individuals within its jurisdiction authorized to use the term "A" as prescribed and controlled by V; in furtherance of the foregoing purposes of the corporation, to buy, lease, or otherwise acquire real estate, lands, or buildings and various items of personal property and to operate, sell, exchange, or dispose of same, either for its own use or for the purpose of obtaining income from any accumulated funds, to make contracts and incur liabilities, to borrow money, to issue notes, bonds or other obligations, and to secure any such obligation by mortgage, pledge or other form of security; and to do and perform all acts which may be deemed necessary or expedient for the successful prosecution of the objects and purposes for which the organization is created and to do each act and thing allowed by the law for the furtherance of the purposes set forth herein.

In your narrative response, you state that your mission is to "provide members, clients and the public with ethical conduct, professional service and the opportunity for growth while promoting successful business practices through educational enrichment and involvement in community concerns." You provide educational classes for your members as well as provide a scholarship to high school seniors.

You also provide members with a Multiple Listing Service ("MLS") "so they may have the greatest opportunity to serve their clients in finding a home." The public also has access to your MLS which allows them to look at homes for sale. Your website, K, features your MLS search on its front page. While the general public may access some features of the MLS, they do not have access to all of the features of the MLS. Your members pay an additional fee of x1 in order to access the MLS site and are provided with MLS features that are not available to the general public. According to the MLS rules and regulation booklet you submitted, the MLS program is a "means by which authorized Participants make blanket unilateral offers of cooperation and compensation to other Participants . . . [and a means] by which information is accumulated and disseminated to enable authorized participants to prepare appraisals and other valuations of real property" Only your members who "hold a current, valid real estate broker's license and are capable of offering and accepting cooperation and compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property" are eligible for membership in the MLS. Participants of the MLS cannot make available the following information to non-MLS participants (i.e. members of the general public): expired, withdrawn, pending, or sold listings; the compensation offered to other MLS participants; the type of listing agreement; the seller(s)' and occupants(s)' name(s), phone number(s), and email address(es); and instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property. You also submitted your Training workbook for the MLS program you use. This training book shows the various features of the MLS that are available to your members that are not available to the members of the general public.

You have a committee on your board dedicated to your MLS program. Article x2 of your Bylaws focuses on your MLS activities. According to your Statement of Revenues and Expenses for your year ending Date 3, you generated x3 income from your MLS dues which is more than you generated from your membership dues. Your executive officer has specific duties associated with the MLS such as downloading the daily listing update to the Board computer, scanning

photos submitted by agents, billing for the scanning service, processing photos that have been scanned in by agents, checking the accuracy of MLS numbers and photo formats submitted by agents, deleting photos as requested by agents, assisting visiting appraisers with information on comparables, distributing comparable information books as prepared by the MLS service provider to subscribers, work with the MLS chair and committee, and recommend changes to dues, fees, etc. as circumstances may warrant.

In addition to your MLS program, you have board committees focused on legislation and F. Your legislation committee promotes the active participation by members in all civic activities, works on legislative matters, and serves as a liaison with both the State and National Committees. Your E committee supervises fundraising within the Board in support of E and encourages member support of local, state, and federal candidates who promote your interests. A portion of your membership fees are paid to V. Of that money, V spends a portion on E, which then engages in lobbying activities on behalf of V.

LAW:

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated.

In Evanston-North Shore Bd. of Realtors v. U.S., 320 F.2d 375 (Ct.Cl. 1963), an Illinois not-for-profit corporation which operated a multiple listing system not directed to improvement of business conditions in the real estate market and not merely as an incidental activity of the board of licensed realty brokers and salesmen, was not entitled to exemption from income tax as a real estate board not organized for profit.

In Rev. Rul. 59-234, 1959-2 C.B. 149, a real-estate board whose primary purpose or activity was the operation of a multiple listing system is considered to be rendering particular services for its members and is not exempt from federal income tax as an organization described in section 501(c)(6) of the Code.

In Rev. Rul. 72-211, 1972-1 C.B. 150, an organization whose principal activity was the operation and maintenance of a plan room that was open for use by all individuals and businesses in the industry, nonmembers as well as members, is not rendering particular services to its members and therefore qualifies for exempt status under section 501(c)(6) of the Code. Providing a plan room available to the entire building and construction industry without charge was found to improve the business conditions of that line of business because it makes information on construction projects freely available to the construction industry as a whole.

RATIONALE:

The information submitted fails to establish that you are organized for purposes as specified in section 501(c)(6) of the Code. Specifically, you have not shown that you are operated for exempt purposes.

Your primary activity is the operation of a MLS program for your members. Your MLS program generates the majority of your revenue. Your Board members and Executive Officer dedicate significant time to this activity. You provided rules and regulations and training books on your MLS that show that this activity is a substantial portion of your overall activities.

Portions of this service are available to members of the general public, however unlike the organization in Rev. Rul. 72-211, supra, which made all aspects of its plan room open to both members and non-members alike, you do not provide equal access to members and non-members. The majority of the features of the MLS are provided only to your paying members and those members are prohibited from sharing MLS information with non-members. Your members can post real estate listings, receive commissions, and generate other benefits from their participation in your MLS program. Like the organizations in Rev. Rul. 59-234 and Evanston-North Shore Bd. of Realtors v. U.S., both supra, your MLS system provides a particular service to your members by assisting in their individual business endeavors. Instead of primarily engaging in activities that further the common business interests of the real estate industry, you provide your members with particular services through your MLS program.

CONCLUSION:

Based on the information provided in your Form 1024 and supporting documentation, we conclude that you are not operated for purposes described in section 501(c)(6) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:2)

1111 Constitution Ave, N.W., PE – 3N3
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements